SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. ———

UNITED STATES OF AMERICA, PETITIONER

vs.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

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3 In Superior Court of Hartford County, State of Connecticut

Complaint

May 3, 1951

To the Sheriff of the County of Hartford, His Deputy, or Either of the Constables of the Town of New Britain Within Said County, Greeting:

By authority of the State of Connecticut, You are hereby commanded to attach to the value of $15,000.00 the goods or estate of General Laundry Service, Inc., a corporation duly organized and having its office and place of business at New Britain, Connecticut, and Sylvia Berson, Saul Berson, Arthur Berson, Henry M. Feroni and William G. Dunn, all of said New Britain, George H. Willard of Manchester, Connecticut, Tingue Brown & Company, a corporation of New York, New York and the United States of America, and them summon to appear before the Superior Court to be held at Hartford within and for the County of Hartford on the first Tuesday in June A. D. 1951, then and there to answer unto Louis Brown of said New Britain in a civil action wherein the plaintiff complains and says:

1. Upon March 28, 1946, the defendants, General Laundry Service, Inc., Sylvia Berson, Saul Berson and Arthur Berson, executed their promissory note to the order of plaintiff as follows:

"$13,000.00, New Britain, Connecticut, March 28, 1946.

"For value received we, jointly and severally promise to pay to the order of Louis Brown of New Britain, Connecticut the sum of Thirteen Thousand Dollars and interest at the rate of five percent (5%) per annum as follows: Interest in advance on unpaid balances on the first day of each month, beginning herewith, and one hundred dollars on account of principal on the first day of each month hereafter until April 1, 1956, at which time the remaining principal balance of one thousand dollars shall be paid in full, together with reasonable attorneys' fees in case of default and any taxes assessed against the holder by reason of the indebtedness evidenced hereby. We promise to pay all taxes and assessments against the premises mortgaged to secure this note promptly when due, keep the same sufficiently insured against loss by fire or other hazards for the protection of the mortgagee and maintain the same in a sound state of repair.

4 "The makers reserve the right to anticipate all or any part of this note at any time after five years and in the event of

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any default the unpaid balance shall at once become due and payable at the option of the holder.

GENERAL LAUNDRY SERVICE,
INCORPORATED,
By NATHAN BERSON,
Its President duly authorized.
SYLVIA BERSON.
SAUL L. BERSON.
NATHAN BERSON.
ARTHUR BERSON.

"Secured by mortgage on premises at South Main, Brook and Mill Streets, New Britain, Connecticut."

2. On said day the defendant, General Laundry Service, Inc., mortgaged to the plaintiff to secure said note the following described premises:

"A certain piece or parcel of land together with all buildings and improvements thereon and appurtenances thereto situated in the town of New Britain, County of Hartford and State of Connecticut, and bounded and described as follows, to wit:

"Bounded:

"Northerly by Brook Street, eighty-three and five hundredths (83.05) feet;

"Easterly by South Main Street, one hundred sixty-nine and fourteen hundredths (169.14) feet;

"Southerly by Mill Street, one hundred eighty-six and five tenths (186.5) feet; and

"Westerly by land of the Acorn Bearing Company or assigns and land of John J. and Margaret E. Crowley or assigns, partly by each, one hundred ninety-eight and forty-four hundredths (198.44) feet, more or less."

Recorded in New Britain Land Records, volume 301, page 261.

3. Upon November 18, 1946, the said defendants executed their further promissory note to the order of plaintiff in the amount of $5,000.00 as follows:

"$5,000.00, New Britain, Connecticut, November 18, 1946.

5 "For value received, we jointly and severally promise to pay to the order of Louis Brown of New Britain, Connecticut, the sum of Five Thousand Dollars and interest at the rate of (5%) per annum as follows: Interest in advance on unpaid balances commencing herewith and each three months after date, and commencing November 18, 1947, principal payments of $250.00 each three months thereafter for the period of two years, together with advance interest on unpaid balances and commencing November 18, 1949, principal payments of $375.00 each three months for two years together with said advance interest payments and until all sums due hereinunder shall have been paid

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in full, together with reasonable attorneys fees in case of default and any taxes assessed against the holder by reason of the indebtedness evidenced hereby. We promise to pay all taxes and assessments against said premises mortgaged to secure this note promptly when due, to keep the same sufficiently insured against loss by fire or other hazards for the protection of the mortgagee and maintain the same in a sound state of repair and, shall the makers fail to pay such taxes and assessments, insurance premiums or repairs, the holder may pay the same or make and pay for any such necessary repairs and add the cost thereof to the principal of this note. The makers reserve the right to anticipate all or any part of this note at any time after two years from date and, in the event of any default, the unpaid balance shall at once become due and payable at the option of the holder.

GENERAL LAUNDRY SERVICE,
INCORPORATED,
By NATHAN BERSON,
Its President duly authorized.
SYLVIA BERSON.
SAUL BERSON.
NATHAN BERSON.
ARTHUR BERSON."

4. On November 18, 1946, the defendant, General Laundry Service, Inc., to secure said note executed a second mortgage to plaintiff of the premises described in paragraph 3 hereof, recorded in the New Britain Land Records, volume 301, page 489.

5. Pursuant to the mortgagors' promise to pay all taxes and other municipal assessments and to keep the premises in a sound state of repair and to keep said premises insured and pay the premiums thereon, the plaintiff, upon default by the de-
6 fendants in the payment of premiums for fire and windstorm insurance on the mortgaged premises, was obliged to pay said premiums for the protection of said property to insurers of the same in the sum of $383.68 and because of unrepaired damage to the roof of said premises was obliged to guarantee payment of and pay for necessary repairs to said premises in the sum of $255.40, which sums have been added to the principal indebtedness of the note of November 18, 1946.

6. The defendants have defaulted in the payment of said notes and the following sums remain due and unpaid on account thereof: Upon the note of March 28, 1946, the sum of $8,424.44; upon the note of November 18, 1946, the sum of $6,400.19; plus reasonable attorney's fees for professional services from May 19, 1949 to date with respect to delinquencies on said notes and the within action.

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7. George H. Willard of Manchester, Connecticut claims an interest in said premises by reason of an attachment in the sum of $2,200.00 dated June 22, 1950, and recorded June 21, 1950, in the New Britain Land Records, volume 343, page 30.

8. Henry M. Feroni of New Britain, Connecticut claims an interest in said premises by reason of a five-year lease of part of said premises, dated August 1, 1946, and recorded in the New Britain Land Records, August 27, 1946, volume 306, page 351.

9. William G. Dunn, of New Britain, Connecticut claims an interest in said premises by reason of an attachment in the sum of $3,000.00 dated and recorded August 18, 1950 in the New Britain Land Records, volume 343, page 309.

10. Tingue Brown & Company of New York, New York, claim an interest in said premises by reason of an attachment in the sum of $499.00 dated and recorded February 2, 1941, in the New Britain Land Records, volume 347, page 531.

11. The United States of America claims an interest in said premises by reason of a lien by John W. Fitzpatrick, collector at Hartford, Connecticut, for federal insurance contributions, withholding taxes and federal unemployment taxes in the sum of $8,475.13 for the period of January 1, 1947, to June 30, 1950, which lien was recorded March 19, 1951 in the New Britain Land Records, volume 350, page 93.

12. Taxes are due and unpaid to the city of New Britain on said premises as follows:

7	General taxes on lists of 1946 to 1950	$3017.18
	Water assessments to date	440.29
	Total	3457.47

13. A filling station and residence on said premises are rented by the mortgagor and the rentals should be applied to delinquent taxes and other obligations of the mortgagor on the said premises for the protection of the plaintiff and other lien claimants.

The plaintiff claims:

1. A receiver of rents,
2. A foreclosure of said mortgage by sale,
3. Allowance of attorney's fees of $250.00.

M. H. Camp of said New Britain is recognized in $75.00 to prosecute, etc.

Of this writ, with your doings thereon, make due service and return.

Dated at New Britain, Connecticut this 3d day of May A. D. 1951.

CARLOS A. RICHARDSON,
Commissioner of the Superior Court for Hartford County.

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In Superior Court of Hartford County

Filed May 29, 1951

Answer of the defendant, United States of America

1. The allegations of paragraph 11 of the Complaint are admitted.

2. As to all other allegations of the Complaint, this defendant has no knowledge or information.

UNITED STATES OF AMERICA,
By ADRIAN W. MAHER,
United States Attorney.
By EDWARD J. LONERGAN,
Assistant United States Attorney.

8 In Superior Court of Hartford County

[Title omitted.]

Judgment

June 22, 1951

This action by writ, dated May 3, 1951, and complaint, claiming foreclosure of two mortgages on land hereinafter described and sale of the mortgaged premises, as on file, came to this Court on the first Tuesday of June 1951, and thence to the present time, when the plaintiff and the defendants William G. Dunn and Tingue Brown and Company and the United States of America appeared, but the defendants General Laundry Service, Inc., Sylvia Berson, Saul Berson, Arthur Berson and Henry M. Feroni and George H. Willard made default of appearance. The Court finds that service of said writ was duly made upon said defaulting defendants, to wit: General Laundry Service, Inc., Sylvia Berson, Saul Berson, Arthur Berson and Henry M. Feroni and George H. Willard all of which appears by the officers return indorsed on said writ.

The Court further finds that all the defaulting defendants have received actual notice of the pendency of this action. The description of said land as set forth in the complaint is as follows:

"A certain piece or parcel of land together with all buildings and improvements thereon and appurtenances thereto situated in the town of New Britain, county of Hartford and State of Connecticut, and bounded and described as follows, to wit:

9 "Bounded:

"Northerly by Brook street, eighty-three and five-hundredths (83.05) feet;

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"Easterly by South Main Street, one hundred sixty-nine and fourteen hundredths (169.14) feet;

"Southerly by Mill Street, one hundred eighty-six and five tenths (186.5) feet; and

"Westerly by land of the Acorn Bearing Company or assigns and land of John J. and Margaret E. Crowley or assigns, partly by each, one hundred ninety-eight and forty-four hundredths (198.44) feet, more or less."

And now the Court having heard the plaintiff and the appearing defendants having failed to disclose any defense in response to plaintiff's motion for such disclosure no plea or answer being filed, finds all the allegations of the complaint true and that the sum of Fourteen Thousand Nine Hundred Seventy-four and 63/100 dollars, is due from the defendants to the plaintiff on the mortgage debt therein mentioned, including $383.68 paid by the plaintiff for insurance, $255.40 paid by the plaintiff for necessary repairs on said mortgaged premises and an allowance of $150.00 on plaintiff's attorney fees.

Upon the written motion of said Louis Brown that the foreclosure of said mortgage, if granted be by a decree of sale, this court is of the opinion that a foreclosure by sale should be decreed.

Whereupon it is adjudged: That Martin H. Horwitz of New Britain, Connecticut is appointed to sell the mortgaged premises above described; that he shall sell the same as a whole, at public auction, on the premises, on Wednesday the 15th of August 1951 at three o'clock in the afternoon; unless, at or before said time, said sum above found to be due upon said mortgage debt, together with legal interest upon the same to the date of payment from the date of this judgment, and the costs of this suit as taxed at this date, amounting to _____ dollars and such expenses for advertising and for the services of Martin H. Horwitz as such committee as may have been incurred at the date of such payment, and the cost of the appraisal hereinafter directed, if previously made and returned, all to be taxed by the clerk, be paid by one or more of the defendants to the plaintiff, in which case said sale shall not take place; that he shall advertise such sale by publishing a notice thereof, containing a description of the premises, in the New Britain Herald, a daily newspaper printed at New Britain not less than three times and in the Hartford Courant, a daily newspaper printed at Hartford, Conn., not less than three times, each publication to be once a week for three successive weeks, the final publications of notice to be not less than one week before August 15, 1951, the date of sale; that when such sale shall have been made by said Martin H. Horwitz, pursuant to this judgment, he shall execute and submit for the approval of this court, a conveyance of the prem-

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ises to the purchaser, and make a return of his doings and bring the proceeds of such sale into court; that Clesson W. Parker and Roy L. Noren, both of New Britain, Conn., and George H. Hamlin of Berlin, Conn., disinterested persons, are appointed to appraise said property under oath and make return of their appraisal to the clerk of this court, on or before July 6, 1951; and that the plaintiff shall be allowed his costs, including the expense of the appraisal, to be taxed and paid out of the proceeds of said sale.

By the Court:

ROBERT L. ALLYN,
Assistant Clerk.

In Superior Court of Hartford County

Motion to be made party defendant

December 18, 1951

The city of New Britain represents that it has an interest in the above-entitled matter; that paragraph 12 of the Complaint states its interest; that it has been allowed to file a brief relative to its claim for taxes and water rents; that the Court's Memorandum of Decision, dated December 18, 1951, found that the liens of the city of New Britain take priority over the liens of the United States; that the United States has filed its intention to appeal; and that unless the city of New Britain is made a party defendant it cannot take part in said appeal as it should do.

Wherefore, the city of New Britain moves that the Court direct that the city of New Britain be made a party defendant nunc pro tunc as of the date of Judgment.

CITY OF NEW BRITAIN,
By HAROLD KOPLOWITZ,
Its Attorney.

11 *Order*

It appearing to the Court that the city of New Britain ought to be joined as a codefendant in the above-entitled cause, it is hereby ordered and directed that the said city of New Britain be, and it is hereby made, a defendant herein.

Dated at ---------- this 18th day of December A. D. 1951.

JOHN M. COMLEY,
Judge.

CONSENTED TO UNITED STATES OF AMERICA,
By EDWARD J. LONERGAN,
Assistant United States Attorney.

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In Superior Court of Hartford County

Memorandum of decision

Filed December 19, 1951

It seems to me that the case of United States v. Security Trust and Savings Bank of San Diego establishes the priority of the federal lien over the lien of Tingue, Brown & Co. While it is true that the attachment laws of California differ in some respects from the attachment laws of Connecticut, I see no escape from the proposition advanced in that case; "Nor can the doctrine of relation back—which by process of judicial reasoning merges the attachment lien in the judgment and relates the judgment lien back to the date of attachment—operate to destroy the realities of the situation." When all is said and done, the inescapable fact remains that when the government filed its lien on March 19, 1951, Tingue, Brown & Co. had no judgment lien. Its judgment lien did not come into existence until the following May 12th. Although for some purposes the lien then relates back to the date of attachment, Tingue, Brown & Co. was not a "judgment creditor" on March 19th. U. S. C. A. 3672 (a) makes that the test in providing that "such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the collector."

I, therefore, hold that the federal tax lien takes precedence over the judgment lien of Tingue, Brown & Co.

The claim of the city of New Britain for taxes and water rents stands upon a different basis. These liens are created by the State of Connecticut and represent an attribute of sovereignty. Whether Congress by appropriate action could provide for the priority of federal tax liens over these liens for local taxes
12 presents a question which need not be decided for the fact is that no such provision has been made, at least where the taxpayer is not insolvent.

See City of Winston-Salem v. Powell Paving Co., 7 Fed. Supp. 424.

Ferris v. Chic-Mint Gum Co., 124 Atl. 577.

It is, therefore, found that the liens of the city of New Britain for taxes totaling $3,075.07 and for water rent totaling $512.64 take priority over the liens of the United States.

COMLEY, *J.*

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In Superior Court of Hartford County

Affidavit

Filed September 28, 1951

I, Joseph I. Kopelman, Acting Chief of the Legal Section of the Bureau of Internal Revenue for the District of Connecticut, being duly sworn depose and say, that in my official capacity indicated, am in charge of the records in the Bureau. It appears that notice and demand was given to and made upon the tax payer for each of the assessment lists received by the Collector of Internal Revenue, as set forth in the last column of the Government's exhibit filed with the Superior Court in the case of Louis Brown v. General Laundry Services, Inc.

Dated at Hartford, Connecticut, this 27th day of September 1951.

JOSEPH I. KOPELMAN,
Acting Chief of the Legal Section,
Bureau of Internal Revenue,
For the District of Connecticut.

Subscribed and sworn to before me this 27th day of September 1951.

EDWARD J. LONERGAN,
Commissioner of the Superior Court.

13 In Superior Court of Hartford County

[Title omitted.]

Supplemental judgment

December 18, 1951

A decree of foreclosure by sale having been rendered in the above-entitled action on June 22, 1951, and the cause having come to the present time for the rendering of a supplementary judgment, and the plaintiff and the defendants, William G. Dunn and Tingue Brown & Company having again appeared and been fully heard and the city of New Britain having filed a brief in its behalf, and the defendants, General Laundry Service, Inc., Sylvia Berson, Saul Berson, Arthur Berson, Henry M. Feroni and George H. Willard having again made default of appearance and no remonstrance being filed, this court finds that the mortgaged premises described in said decree were not redeemed from said mortgage, and have been sold by Martin H. Horwitz appointed for that purpose, to Louis Brown of New Britain, Connecticut, the plaintiff in said action; that said Martin H. Horwitz has executed

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and submitted for the approval of this court a conveyance of said premises to said Louis Brown and has brought into court the said proceeds of said sale above the debt and costs of said Louis Brown, to wit: the sum of Twelve Thousand One Hundred Eighty Dollars and Sixty Five Cents ($12,180.65), and made return of his doings as on file and has turned into court, as receiver of rents duly appointed as on file appears, the further sum of Five Hundred Seventy One Dollars and Twenty Four Cents ($571.24) with an account of his doings as such receiver of rents; that the appraisers,

Clesson W. Parker, Roy M. Noren and George Hamlin have
14 appraised said premises under oath at Twenty Seven
Thousand Five Hundred Dollars ($27,500.00) and made return of such appraisal to the clerk of this court as on file; all of which has been done pursuant to said decree.

The court further finds that the expenses of said sale and appraisal are as follows: Appraisers, Clesson W. Parker, $30.00, Roy M. Noren, $30.00, George Hamlin, $30.00, Clerk for holding and disbursing proceeds, $22.00, Martin H. Horwitz for services in making said sale as shown on his committee's report, $1,325.00 and for his expenses thereon, $264.09 and said Martin W. Horwitz for services and costs of bond as receiver of rents, $60.00, a total expense of $1,761.09 and that after the payment of said expenses there will remain of the proceeds of said sale above the debt and costs of the plaintiff as purchaser, the sum of $10,419.56, plus the further proceeds of rents collected by said receiver of rents in the amount of $571.24, or a total of proceeds of $10,990.80.

The defendant, George H. Willard, having defaulted in appearance and having failed to plead and the plaintiff having filed his motion for disallowance of any claim by him and for discharge of the attachment filed by him as in the complaint on file on the grounds that his said action in which said attachment was made has not been returned to the Court of Common Pleas for Hartford County, the court to which it was returnable, on the first Tuesday of August 1950, now, therefore, the claim of said George Willard is disallowed and the lien of said attachment is hereby released and discharged.

The court finds that there is due at this date from the defendants to parties in this action, upon the incumbrances designated, in order of their priority, sums as follows: To the city of New Britain for general taxes due on the foreclosed premises on the lists of 1946 to 1950, inclusive, $3,075.07; water assessments to date $512.64, a total of $3,587.71; to Louis Brown, the plaintiff, holder of the first and second mortgages, including his costs taxed at $137.58, the sum of $15,319.35; to William G. Dunn of New Britain, Connecticut, holder of a judgment lien, the sum of $2,017.18; to

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the United States of America, holder of a tax lien, the sum of $8,475.13, and that, the defendant General Laundry Service, Inc., is in possession of said premises.

Whereupon, it is adjudged that said sale is ratified and confirmed and said conveyance is approved; that the defendant
15 General Laundry Service, Inc., shall deliver up the premises to the purchaser; that the clerk of this court shall first pay out of the proceeds the expenses thereof to the persons to whom they are hereinbefore found to be due which includes $22.00 to the Clerk of Court in a total amount of $1,761.09 and shall pay the remainder of said proceeds as follows:

City of New Britain	$3,587.71
William G. Dunn, c/o Attorney Israel Nair, New Britain	2,017.18
United States of America	5,385.91
Total	10,990.80

JOHN M. COMLEY,
Judge.

Recapitulation:	
Expenses	$1,761.09
City of New Britain	3,587.71
L. Brown	15,319.35
Wm. G. Dunn	2,017.18
United States of America	5,385.91
	28,071.24
Sale price	27,500.00
Rents received	571.24
	28,071.24

In Superior Court of Hartford County

[Title omitted.]

Appeal of the United States of America to the Supreme Court of Errors

March 12, 1952

In the above-entitled action, the Defendant, United States of America, appeals to the Supreme Court of Errors from the Judgment rendered therein concerning the relative priority of the claim of the United States of America and the city of
16 New Britain to the proceeds of the sale of the real estate involved in the action.

Dated at Hartford, Connecticut, this 12th day of March 1952.

DEFENDANT,
UNITED STATES OF AMERICA,
By ADRIAN W. MAHER,
United States Attorney.
By EDWARD J. LONERGAN,
Assistant United States Attorney.

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I certify that the foregoing appeal was filed on March 13, 1952, and that the record and entry fees have been paid.

ROBERT L. ALLYN,
Assistant Clerk.

(Pursuant to 28 U. S. C. 2408, no bond for cost is required of the United States of America.)

In Superior Court of Hartford County

Stipulation of facts

(Filed April 16, 1952)

It is hereby stipulated and agreed by and between the city of New Britain and the United States of America that the following facts may be found by the Court:

1. This foreclosure action was instituted on May 3, 1951, returnable to the Superior Court for Hartford County on the first Tuesday of June 1951. A Judgment of Foreclosure by Sale was entered by the Court on June 22, 1951. The premises were sold at public sale for $27,500.00 on the 15th day of August 1951, and the proceeds of the sale were paid by the committee to the Clerk of the Court.

2. The city of New Britain was made a party defendant nunc pro tunc by order of the Superior Court on March 18, 1952.

3. The present controversy is between the city of New Britain and the United States of America as to which is entitled to priority in the distribution of the proceeds.

4. The claim of the city of New Britain is based on tax liens for the years 1947 to 1951, inclusive, and on water rent due the Board of Water Commissioners, the items of each of which are as follows:

City taxes

(a)

Date due	Tax	Interest	Lien	Total
10-1-47	$495.89	$128.93	$3.75	$628.57
10-11-48	503.19	91.81	3.75	598.75
17 9-1-49	539.65	75.55	3.75	618.95
1950	557.15	44.57	3.75	605.47
1951	611.11	12.22		623.33

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(b) The water rent due is as follows:

Date due	Water rent	Penalty	Interest	Lien	Total
8 BROOK STREET					
12-1-47	$3.15	$0.32	$0.72		$4.19
6-1-48	4.70	.47	.98		6.15
12-1-48	3.15	.32	.54	$0.50	4.51
6-1-49	4.17	.42	.65	.50	5.74
12-1-49	4.31	.43	.52	.50	5.76
6-1-50	4.31	.43	.39	.50	5.63
12-1-50	3.50	.35	.22	.50	4.57
6-1-51	4.80	.48	.17		5.45
Total					42.00
453 SOUTH MAIN STREET					
6-1-49	96.10				96.10
12-1-49	120.37		2.02		122.39
6-1-50	110.92		9.99		120.91
12-1-50	103.56		6.22		109.78
6-1-50	56.16	5.62	1.68		63.46
Total					512.64
467 SOUTH MAIN STREET					
6-1-51	5.44	.54	.07		6.05
Total					6.05
Grand total					560.69

5. The Government gave notice to the taxpayer, General Laundry Service, Inc., of the taxes due from it and made demand on it for payment of such taxes in the amount of $8,475.13. Payment was not made. Notice of Federal tax lien in said amount was then filed in the office of the town clerk of New Britain and in the office of the Clerk of the United States District Court in New Haven. The items making up said lien are as follows:

18 *Nature of tax*	*Year or taxable period ended*	*Date assessment list received*	*Amount of assessment*
FIC	1st quarter 1949	June 20, 1949	$212.76
FIC	3d quarter 1949	Dec. 16, 1949	245.48
FIC	1st quarter 1950	June 5, 1950	100.00
FIC	2d quarter 1950	Sept. 21, 1950	291.88
Federal unemployment	Year of 1948	July 26, 1950	6.72
Withholding	4th quarter 1947	Apr. 26, 1948	357.07
Withholding	2d quarter 1948	Oct. 22, 1948	1,152.90
Withholding	3d quarter 1948	Jan. 14, 1949	991.60
Withholding	4th quarter 1948	Apr. 27, 1949	1,038.14
Withholding	1st quarter 1949	May 27, 1949	1,002.29
Withholding	2d quarter 1949	Aug. 29, 1949	885.45
Withholding	3d quarter 1949	Nov. 28, 1949	1,000.65
Withholding	1st quarter 1950	June 5, 1950	300.00
Withholding	2d quarter 1950	Sept. 21, 1950	890.19
Total			8,475.13

6. Each of the items indicated in the Government's tax lien bears interest from their respective assessment dates.

7. The Superior Court held that the city's liens for water and taxes took precedance over the Federal tax liens and its com-

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ponent parts and should be first paid from the proceedings of the sale and a supplemental judgment was entered accordingly on December 18, 1951.

8. The question of law which these parties desire to have reviewed is:

Did the Court err in deciding that the tax liens and water liens of the city of New Britain take precedence over the Government's tax lien and its component parts in the distribution of the proceeds of the sale of the real estate?

Dated at Hartford, Connecticut, this 15th day of April 1952.

CITY OF NEW BRITAIN,
By HAROLD KOPLOWITZ,
Its Attorney.
UNITED STATES OF AMERICA,
By ADRIAN W. MAHER,
United States Attorney.
By EDWARD J. LONERGAN,
Assistant United States Attorney.

19 In Superior Court of Hartford County

Finding

Filed May 29, 1952

FIRST

Upon the basis of a stipulation submitted to this court by the parties, the following facts are found:

1. This foreclosure action was instituted on May 3, 1951, returnable to the Superior Court for Hartford County on the first Tuesday of June, 1951. A Judgment of Foreclosure by Sale was entered by the Court on June 22, 1951. The premises were sold at public sale for $27,500.00 on the 15th day of August, 1951, and the proceeds of the sale were paid by the committee to the Clerk of the Court.

2. The City of New Britain was made a party defendant nunc pro tunc by order of the Superior Court on March 18, 1952.

3. The present controversy is between the City of New Britain and the United States of America as to which is entitled to priority in the distribution of the proceeds.

4. The claim of the City of New Britain is based on tax liens for the years 1947 to 1951, inclusive, and on water rent due the Board of Water Commissioners, the items of each of which are as follows:

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City taxes

(a)

Date due	Tax	Interest	Lien	Total
10-1-47	$495.89	$128.93	$3.75	$628.57
10-11-48	503.19	91.81	3.75	598.75
9-1-49	539.65	75.55	3.75	618.95
1950	557.15	44.57	3.75	605.47
1951	611.11	12.22		623.33

(b) The water rent due is as follows:

Date due	Water rent	Penalty	Interest	Lien	Total
8 BROOK STREET					
12-1-47	$3.15	$0.32	$0.72		$4.19
6-1-48	4.70	.47	.98		6.15
12-1-48	3.15	.32	.54	$0.50	4.51
6-1-49	4.17	.42	.65	.50	5.74
12-1-49	4.31	.43	.52	.50	5.76
6-1-50	4.31	.43	.39	.50	5.63
12-1-50	3.50	.35	.22	.50	4.57
6-1-51	4.80	.48	.17		5.45
Total					42.00
20 453 SOUTH MAIN STREET					
6-1-49	96.10				96.10
12-1-49	120.37		2.02		122.39
6-1-50	110.92		9.99		120.91
12-1-50	103.56		6.22		109.78
6-1-50	56.16	5.62	1.68		63.46
Total					512.64
467 SOUTH MAIN STREET					
6-1-51	5.44	.54	.07		6.05
Total					6.05
Grand total					560.69

5. The Government gave notice to the taxpayer, General Laundry Service, Inc., of the taxes due from it and made demand on it for payment of such taxes in the amount of $8,475.13. Payment was not made. Notice of Federal tax lien in said amount was then filed in the office of the town clerk of New Britain and in the office of the Clerk of the United States District Court in New Haven on March 19, 1951. The items making up said lien are as follows:

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Nature of tax	*Year or taxable period ended*	*Date assessment list received*	*Amount of assessment*
FIC	1st quarter 1949	June 20, 1949	$212.76
FIC	3d quarter 1949	Dec. 16, 1949	245.48
FIC	1st quarter 1950	June 5, 1950	100.00
FIC	2d quarter 1950	Sept. 21, 1950	291.88
Federal unemployment	Year of 1948	July 26, 1950	6.72
Withholding	4th quarter 1947	Apr. 26, 1948	357.07
Withholding	2d quarter 1948	Oct. 22, 1948	1,152.90
Withholding	3d quarter 1948	Jan. 14, 1949	991.60
Withholding	4th quarter 1948	Apr. 27, 1949	1,038.14
Withholding	1st quarter 1949	May 27, 1949	1,002.29
Withholding	2d quarter 1949	Aug. 29, 1949	885.45
Withholding	3d quarter 1949	Nov. 28, 1949	1,000.65
Withholding	1st quarter 1950	June 5, 1950	300.00
Withholding	2d quarter 1950	Sept. 21, 1950	890.19
Total			8,475.13

21 6. Each of the items indicated in the Government's tax lien bears interest from their respective assessment dates.

SECOND

The court reached the following conclusions:

7. The city's liens for water and taxes took precedence over the Federal tax liens and its component parts and should be first paid from the proceeds of the sale and a supplemental judgment was entered accordingly on December 18, 1951.

THIRD

The United States of America made the following claim of law which the court overruled and rendered judgment as on file.

8. The tax liens and water liens of the city of New Britain did not take precedence of the claims of the United States of America for taxes in the distribution of the proceeds of the sale of the real estate.

COMLEY, *J.*

In Superior Court of Hartford County

Assignment of errors

The Court erred:

1. In determining that the tax liens and the water liens of the city of New Britain took priority over the tax lien of the United States.

UNITED STATES OF AMERICA,
By ADRIAN W. MAHER,
United States Attorney.
By EDWARD J. LONERGAN,
Assistant United States Attorney.

[Clerk's certificate to foregoing transcript omitted in printing.]

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23 In Supreme Court of Errors

November Term, 1952

LOUIS BROWN
v.
GENERAL LAUNDRY SERVICE, INC., ET AL.

Appeal from a supplemental judgment, Comley, J., rendered in an action of foreclosure in the Superior Court in Hartford County, determining that the liens of the city of New Britain for taxes and water rates due from the named defendant are entitled to priority over the liens of the United States for taxes owed by that defendant. No error.

Louise Foster, of the District of Columbia bar, special assistant to the attorney general, with whom were Edward J. Lonergan, assistant United States attorney, and, on the brief, Adrian W. Maher, United States attorney, and A. F. Prescott, special assistant to the attorney general, for the appellant (defendant United States) .

Harold Koplowitz, for the appellee (defendant city of New Britain).

Opinion

INGLIS, *J.* The question to be decided on this appeal is whether, in an action to foreclose mortgages on real property, the general liens for taxes due the United States have priority over perfected municipal liens for taxes and water rates assessed against the property in question.

The action was instituted to foreclose the first and second mortgages on real property located in New Britain and owned by the named defendant. The first mortgage was dated March 28, 1946, and the second, November 18, 1946. A judgment of foreclosure by sale was rendered on June 22, 1951. Pursuant thereto, the property was sold for $27,500. In the supplemental judgment, the court found that the property was subject to the following incumbrances: the two mortgages to the plaintiff; a judgment lien dating from August 18, 1950, in favor of the defendant Dunn; liens for taxes and water assessments due the city of New Britain, totaling $3,587.71; and liens in favor of the United States for various taxes, in the total amount of $8,475.13 plus interest. The tax liens of the city were for taxes which had become due in 1947, 1948, 1949, 1950, and 1951. The due dates of water rates for which the property was subject to liens ran from December 1, 1947 to June 1, 1951. The liens of the United States were for (1) Federal insurance contributions for two quarters in 1949 and two

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quarters in 1950, the assessment lists of which had been received by the collector shortly after their respective due dates; (2) Federal unemployment contributions for the year 1948, the assessment list of which had been received on June 26, 1950; and (3) withholding taxes, the assessment lists of which had been received at various times between April 26, 1948, and September 21, 1950. The Government had given notice to the taxpayer, the named defendant, and demanded payment of the amount of the taxes. It had also, on March 19, 1951, filed notice of its tax liens in the office of the town clerk in New Britain and in the office of the clerk of the United States District Court in New Haven.

In addition to the proceeds of the sale of the mortgaged property, a receiver of rents reported that he had collected a net amount of $571.24, so that there was available for distribution a total amount of $28,071.24. By its supplemental judgment, the court ordered distribution to the respective parties in the following amounts and the following order: to the committee and others, for the expenses of the sale, $1,761.09; to the city of New Britain, $3,587.71; to the plaintiff, $15,319.35; to the Defendant Dunn, the judgment lienor, $2,017.18; to the United States, the balance remaining—$5,385.91. From this judgment the United States has appealed. It does not attack so much of the judgment as directs the satisfaction in full of the claims of the plaintiff and the defendant Dunn. It does contend that its claim should have been given priority over that of the city of New Britain.

The city's claim of priority is based on §§ 1853 and 758 of the General Statutes. Section 1853 reads: "The interest of each person in each item of real estate, which shall have been legally set in his assessment list, shall be subject to a lien for that part of his taxes laid upon the valuation of such interest, as found in such list when finally completed * * *." It goes on to provide that the lien shall exist from the first day of October or other assessment date of the municipality in the year previous to that in which the tax shall have become due "and, during its existence, shall take precedence of all transfers and incumbrances, in any manner affecting such interest in such item, or any part of it." Section 758, after authorizing municipalities to assess water rates against the owners of properties connected with its water system, provides that such rates or charges, if not paid when due, shall constitute a lien upon the premises served, which lien shall take precedence over all other liens or incumbrances except taxes. The word "taxes" as here used means only those taxes which may be assessed in favor of the state or some subdivision thereof and which, under the law, are secured by specific liens upon real property. So far as state law is effective, it is clear that the liens of the city of New

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Britain on the property under foreclosure would take precedence over any other incumbrance on the property, irrespective of the time at which that incumbrance might have attached.

24 The first question, therefore, is whether the state law is effective to control the decision of this case or whether the Federal Government has the power to override, and, acting by the Congress, has overridden, the state legislation. The State of Connecticut is a sovereign state in its own right and to a certain extent is, in the exercise of sovereign power, independent of the United States. Hoxie v. New York, N. H. & H. R. Co., 82 Conn. 352, 355, 73 A. 754. The power to authorize its subdivisions to assess taxes and to provide means whereby the collection of those taxes may be secured is an exercise of the state's sovereignty. On the other hand, the states, by ratifying the federal constitution, have delegated to the United States the power to levy and collect taxes. U. S. Const. Art. 1 § 8. Furthermore, the states have agreed, by ratifying article VI of the federal constitution, that any constitutional enactment of the Congress shall be the supreme law of the land. It follows that the Congress has the power to make provision for the collection of any properly laid tax by enacting that the tax shall be a lien taking precedence over all other liens, even those for taxes assessed by a state. Michigan v. United States, 317 U. S. 338, 340, 63 S. Ct. 302, 87 L. Ed. 312; United States v. Snyder, 149 U. S. 210, 214, 13 S. Ct. 846, 37 L. Ed. 705; United States v. San Juan County, 280, F. 120, 121; Exchange National Bank v. United States, 147 Wash. 176, 182, 265 P. 722. Whether Congress has exercised that power to the extent that it has given the Federal liens priority over those in favor of the city of New Britain is the crucial question in the present case.

The enactment of Congress upon which the Federal Government bases its claim in this case, and the only Federal legislation pertinent to the present situation, is §§ 3670–3672 of the Internal Revenue Code. 53 Stat. 448, as amended, 26 U. S. C. §§ 3670–3672 (1946). The relevant portions of those sections are quoted in the footnote.[1] To summarize them, §§ 3670 and 3671 provide

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[1] "SEC. 3670. PROPERTY SUBJECT TO LIEN. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

"SEC. 3671. PERIOD OF LIEN. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

"SEC. 3672. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS. (a) Invalidity of lien without notice.—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector. (1) Under state or territorial laws.—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory

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that the amount of any tax due to the United States shall be a lien upon all the property and rights to property of the debtor, which "lien shall arise at the time the assessment list was received by the collector" and shall continue until the tax has been paid or has become unenforceable. Section 3672 provides that the lien shall not be valid "as against any mortgagee, pledgee, purchaser, or judgment creditor" until notice thereof has been filed by the collector either in some office designated by the law of the state in which the property subject to the lien is situated or, failing such designation, in the office of the United States District Court.

The United States has cited a long line of cases which hold that under some circumstances debts due the United States take precedence over antedating liens for taxes due a state or municipality, where the latter are general and inchoate. Illinois ex rel. Gordon v. Campbell, 329 U. S. 362, 370, 67 S. Ct. 340, 91 L. Ed. 348; New York v. Maclay, 288 U. S. 290, 292, 53 S. Ct. 323, 77 L. Ed. 754; Spokane County v. United States, 279 U. S. 80, 93, 49 S. Ct. 321, 73 L. Ed. 621; Stover v. Scotch Hills Coal Co., 4 F. 2d 748; Spokane Merchants' Assn. v. State, 15 Wash. 2d 186, 188, 189, 130 P. 2d 373; Exchange National Bank v. United States, 147 Wash. 176, 182, 265 P. 722; United States v. Texas, 314 U. S. 480, 486, 62 S. Ct. 350, 86 L. Ed. 356; United States v. Reese, 131 F. 2d 466, 468. The distinguishing feature of these cases is that they were all decided under § 3466 of the Revised Statutes (1875), 31 U. S. C. § 191 (1946). Section 3466 provides: "Whenever any person indebted to the United States is insolvent * * * the debts due to the United States shall be first satisfied * * *" This section applies only to cases in which the person indebted to the United States has been adjudged insolvent. It has no application in a case such as the present, in which the taxpayer has not been so adjudged. Equitable Trust Co. v. Connecticut Brass & Mfg. Corporation, 290 F. 712, 719.

Nor does the reasoning by which the result was reached in the cases relied upon by the Government apply to the situation involved in the present case. In each of them the lien for state taxes was both inchoate and general at the time the Federal lien attached. In the instant case the liens in favor of the municipality were both perfected and specific. See United States v. Alabama, 313 U. S. 274, 280, 61 S. Ct. 1011, 85 L. Ed. 1327; Merchants Bank & Trust Co. v. Pettison, 112 Conn. 652, 656, 153 A. 789. In a case falling within the provisions of § 3466, it would obviously be so, as the cases hold, that the United States must be

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has by law authorized the filing of such notice in an office within the State or Territory; or (2) With clerk of district court.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory. * * *"

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paid first out of the insolvent's assets and that those assets would consist of all of his property except to the extent that it was subject to a perfected and specific lien. The existence of a general or inchoate lien against the property of an insolvent would not deprive him of his property rights in any of his particular assets.

In this respect § 3466 is fundamentally different from
25 §§ 3670–3672. As will appear presently, §§ 3670–3672 make no provision for the priority of Federal liens over antedating liens in favor of others even though the latter may be inchoate and general. There is nothing in the opinion in United States v. Security Trust & Savings Bank, 340 U. S. 47, 71 S. Ct. 111, 95 L. Ed. 53, to indicate, as claimed by the Government, that this fundamental difference does not exist. Accordingly, § 3466 has no application either directly or by analogy to the present case. Equitable Trust Co. v. Connecticut Brass & Mfg. Corporation, supra, 723. That brings us to a reassertion that the case at bar, so far as the rights of the United States are concerned, is controlled exclusively by the provisions of §§ 3670–3672.

The important consideration with reference to §§ 3670 and 3671, taken by themselves and without reference to § 3672, is that not only do they omit to provide expressly that the Federal lien shall take precedence over any antedating lien but also they in terms provide that the lien shall "arise" at the time the assessment list is received by the collector. It exists only from that time. The United States has no lien rights other than those created by statute. Equitable Trust Co. v. Connecticut Brass & Mfg. Corporation, supra, 718. The scope and effect of its liens are to be determined solely from the statute and the proper interpretation thereof. MacKenzie v. United States, 109 F. 2d 540, 541. Accordingly, nothing can be read into the two sections to enlarge the effect of liens over and above the effect which the plain wording of the statute gives to them. Inasmuch as these two sections expressly date a lien only from the time the collector receives the assessment list, the liens in question have no priority over incumbrances which antedate them. The principle ordinarily applicable to the determination of priority of incumbrances, namely, first in order of time, first in right, applies. United States v. Greenville, 118 F. 2d 963, 966. The most that the United States could take under §§ 3670 and 3671 would be priority for its liens over those municipal liens which attached after its liens became effective. That is to say, the liens, whether they are in favor of the United States or the city of New Britain, would have priority in the order of the times at which they came into existence. See Citizens Bank v. Vidal, 114 F. 2d 380, 384. The municipal liens for taxes were specific, since they were on a particular piece of property. Though inchoate, they attached on the first day of

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October in the year preceding that in which the taxes became due. General Statutes § 1853; United States v. Sampsell, 153 F. 2d 731, 734. The liens for water rates attached as those rates became due. General Statutes § 758. The Federal liens attached and became perfected on the dates when the assessment lists were received by the collector.

So much for the result which would be reached in this case if only §§ 3670 and 3671 of the Internal Revenue Code were applied. The application of § 3672 brings about a different result. The property under foreclosure was subject to two mortgages and a judgment lien. Since these had been placed on the property before notice of the Federal liens was filed in the town clerk's office or in the office of the clerk of the United States District Court, they had priority over the Federal liens. On the other hand, they were subordinate to the municipal liens. General Statutes § 1853; Wilcox v. Bliss, 116 Conn. 329, 334, 164 A. 659.

By authority of §7192 of the General Statutes, it would have been permissible for the mortgagee to pay the municipal taxes and water rates, and if he had done so the amount thereof would have been added to his debt. Having become a part of his debt, they clearly, under § 3672 of the Internal Revenue Code, would have to be satisfied before the property could be applied to the satisfaction of the federal taxes. It would indeed be an anomalous situation if the priority of the liens for municipal taxes and water rates over the Federal liens were dependent upon the election of the mortgagee to pay the amounts due to the city.

Moreover, if priority were accorded to the Federal liens over those of the municipality, the result would have to be that either the rank of the municipal liens would be reduced below that of the mortgages and judgment lien, which would be in violation of the State law, or the position of the Federal liens would be moved up to a place ahead of the mortgages and judgment lien, in violation of § 3672. It can hardly be assumed that the Congress intended any such result. The only reasonable interpretation of § 3672 is that the Congress, in enacting it, expressed the intention that Federal liens should be subordinated to such mortgages and judgment liens as are described therein and, consequently, subordinated to such other incumbrances as have priority over those mortgages and judgment liens. Ferris v. Chic-Mint Gum Co., 14 Del. Ch. 232, 239, 124 A. 577; Board of Supervisors v. Hart, 210 La. 78, 93, 26 So. 2d 361. In other words, the Congress has not undertaken so to legislate that, under the circumstances present in this case, the Federal liens would have priority over the municipal liens. It follows that the trial court was correct in concluding that liens of the city of New Britain for taxes and

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water rates had priority over the mortgages, the judgment lien and the liens of the United States.

There is no error.

In this opinion the other judges concurred.

26 In Supreme Court of Errors of the State of Connecticut

LOUIS BROWN OF NEW BRITAIN

v.

GENERAL LAUNDRY SERVICE, INC., SYLVIA BERSON, SAUL BERSON, ARTHUR BERSON, HENRY M. FERONI AND WILLIAM G. DUNN, ALL OF NEW BRITAIN, GEORGE H. WILLARD, OF MANCHESTER, TINGUE BROWN & COMPANY, OF NEW YORK, NEW YORK AND UNITED STATES OF AMERICA

ON APPEAL FROM SUPERIOR COURT HARTFORD COUNTY

Judgment

December 30, 1952

This appeal by the defendant the United States of America from the judgment of said Superior Court was allowed by said Court on the 13th day of March 1952.

On the 9th day of June 1952, the appellant filed its assignments of error claiming error in the record, judgment, proceedings and decisions of said Court on questions of law arising in the trial as may appear in the certified transcript of record on file in this Court, and said appeal came to this Court at its term holden on the first Tuesday of October 1952, when the parties appeared and thence by continuance to the present term.

This Court, having heard the parties, finds that in the record, judgment, proceedings and decisions of said Court there is no error.

It is therefore considered and adjudged that said judgment of said Superior Court be and the same is hereby affirmed and that the City of New Britain recover of the defendant the United States of America his costs taxed at ------ dollars and ------ cents.

By the Court:

RAYMOND G. CALNEN,
Clerk.

Judgment entered December 30th 1952.

[Clerk's certificate to foregoing transcript omitted in printing.]

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27 Supreme Court of the United States

No. ____, October Term, 1952

[Title omitted.]

Order extending time to file petition for writ of certiorari

Upon consideration of the application of counsel for petitioner,
It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 29, 1953.

ROBERT H. JACKSON,
Associate Justice of the Supreme Court of the United States.

Dated this 11th day of March 1953.

U. S. GOVERNMENT PRINTING OFFICE: 1953

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SUPREME COURT OF THE UNITED STATES

No. 92, OCTOBER TERM, 1953

UNITED STATES OF AMERICA, PETITIONER

vs.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL.

Order allowing certiorari. Filed October 12, 1953

The petition herein for a writ of certiorari to the Supreme Court of Errors of the State of Connecticut is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

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